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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRIS KOHLER,

Plaintiff,

vs.

CPG CARLSBAD HOLDINGS,
LLC., et al.

Defendants.

CASE NO. 10-CV-0365-IEG-RBB
DEFENDANT PUMA NORTH
AMERICA, INC.'S ANSWER TO
COMPLAINT AND JURY
DEMAND

Defendant PUMA NORTH AMERICAN, INC. (hereinafter referred to as
“Defendant”), in response to Plaintiff’s Complaint, admits, denies and alleges as
follows:

I. SUMMARY

1. Defendant lacks sufficient knowledge or information to form a belief
as to the truth of the allegation contained in paragraphs 1 and 2 of Plaintiff’s
Complaint and, on that basis, denies each and every allegation contained in said
paragraphs.

II. JURISDICTION

2. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegation contained in paragraphs 3, 4 and 5 of Plaintiff's Complaint and, on that basis, denies each and every allegation contained in said paragraphs.

III. VENUE

3. In response to paragraph 6 of the Complaint, Defendant admits that the store at issue is within the jurisdiction of this court. Except as expressly admitted herein, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 6 of Plaintiff's Complaint, and on that basis denies each and every remaining allegation contained therein.

IV. PARTIES

4. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 7 through 24 of Plaintiff's Complaint and, on that basis, denies each and every allegation contained in said paragraphs.

V. FACTS

5. Defendant denies the allegations in paragraphs 63, 64, 108, 109 and 110 of Plaintiff's Complaint.

6. Defendant admits the allegations in paragraph 35 of Plaintiff's Complaint.

7. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraphs 25 through 34, 36 through 62, 65 through 107 and 111 through 128 of Plaintiff's Complaint and on that basis, denies each and every allegation contained in said paragraphs.

VI. through XLV. FIRST through FORTY-FOUR CLAIMS

8. Defendant lacks sufficient knowledge or information to form a belief

1 as to the truth of the allegations contained in paragraphs 129 through 495 of
2 Plaintiff's Complaint and, on that basis, denies each and every allegation contained
3 in said paragraphs.

XLVI. FORTY-FIFTH CLAIM

Americans With Disability Act Of 1990

6 9. In response to paragraph 496 of the Complaint, Defendant re-alleges
7 and incorporates herein as though set forth at length its responses to paragraph 1
8 through 128.

9 10. Defendant denies the allegations in paragraphs 498, 505 and 508 of
10 Plaintiff's Complaint.

11 11. Defendant lacks sufficient knowledge or information to form a belief
12 as to the truth of the allegations in paragraph 501, 502, 505, 506, 510, 511 and 512
13 of Plaintiff's Complaint and, on that basis, denies each and every allegation in said
14 paragraphs.

15 12. Paragraph 497, 499, 500, 504, 507 and 509 of Plaintiff's Complaint
16 contain statutory recitations which contain no factual allegations and constitutes
17 unnecessary and therefore irrelevant information as to which a factual response is
18 not warranted. To the extent a response is warranted to said paragraphs, Defendant
19 denies each and every allegation contained in said paragraphs.

XLVII. FORTY-SIXTH CLAIM

Disabled Persons Act

22 13. In response to paragraph 513 of Plaintiff's Complaint, Defendant re-
23 alleges and incorporates herein as though set forth at length its responses to
24 paragraphs 1 through 128 inclusive, of the Complaint, as set forth above.

25 | 14. Defendant denies the allegations in paragraph 517 of Plaintiff's
26 | Complaint.

27 || 15. Defendant lacks knowledge or information sufficient to form a belief

1 as to the truth of the allegations in paragraph 508 of Plaintiff's Complaint and, on
 2 that basis, denies each and every allegation contained in said paragraphs.

3 16. Paragraphs 514, 515 and 516 of Plaintiff's Complaint contain
 4 statutory quotations which contain no factual allegations and constitute
 5 unnecessary and therefore irrelevant information as to which a factual response is
 6 not warranted. To the extent response to said paragraphs is warranted, Defendant
 7 denies each and every allegation contained in said paragraphs.

8 **XLVIII. FORTY-SEVENTH CLAIM**

9 **Unruh Civil Rights Act**

10 17. In response to paragraph 519 of Plaintiff's Complaint, Defendant re-
 11 alleges and incorporates herein, as though set forth at length, its responses to
 12 paragraphs 1 through 128, inclusive, of the Complaint, as set forth above.

13 18. Defendant denies the allegations in paragraph 523 and 524 of
 14 Plaintiff's Complaint.

15 19. Defendant lacks sufficient knowledge or information to form a belief
 16 as to the truth of the allegations in paragraphs 525 and 526 of Plaintiff's Complaint
 17 and, on that basis, denies each and every allegation contained in said paragraphs.

18 20. Paragraphs 520, 521 and 522 of Plaintiff's Complaint contain
 19 statutory citations which contain no factual allegations and constitute unnecessary
 20 and therefore irrelevant information as to which a factual response is not
 21 warranted. To the extent response to said paragraphs is warranted, Defendant
 22 denies each and every allegation contained in said paragraphs.

23 **XLIX. FORTY-EIGHTH CLAIM**

24 **Denial Of Full And Equal Access To Public Facilities**

25 21. In response to paragraph 527 of Plaintiff's Complaint, Defendant re-
 26 alleges and incorporates herein, as though set forth at length its responses to
 27 paragraphs 1 through 128, inclusive, of the Complaint, as set forth above.

1 22. Defendant lacks sufficient knowledge or information to form a belief
2 as to the truth of the allegations in paragraphs 530 and 531 of Plaintiff's Complaint
3 and, on that basis, denies each and every allegation contained in said paragraphs.

4 23. Paragraphs 528 and 529 of Plaintiff's Complaint contain statutory
5 quotations which contain no factual allegations and constitute unnecessary and
6 therefore irrelevant information as to which a factual response is not warranted.
7 To the extent response to said paragraphs is warranted, Defendant denies each and
8 every allegation contained in said paragraphs.

1 24. Defendant lacks sufficient knowledge or information to form a belief
2 as to the truth of the allegations contained in paragraphs 532 through 753 of
3 Plaintiff's Complaint and, on that basis, denies each and every allegation contained
4 in said paragraphs.

AFFIRMATIVE DEFENSES

16 25. AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE to
17 Plaintiff's Complaint, and to each claim thereof, Defendant alleges that the
18 Complaint, and the whole thereof, fails to state a claim upon which relief may be
19 granted against this answering Defendant.

20 26. AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE to
21 Plaintiff's complaint, and to each claim thereof, this answering Defendant alleges
22 that this court does not have jurisdiction over the subject matter of Plaintiff's
23 Complaint.

24 27. AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE to
25 Plaintiff's Complaint, and to each claim thereof, this answering Defendant is
26 informed and believes, and upon said information and belief alleges that Plaintiff
27 failed to exercise reasonable care for his own protection against the type of

1 damages and incidents alleged to have occurred in his Complaint, if any, which
2 damages and incidents are denied by this answering Defendant. If any such
3 damage has occurred, it was proximately and legally caused in some proportion, up
4 to and including the whole thereof, by the negligence of the Plaintiff, and therefore
5 any award against this answering Defendant, if any, must be reduced according to
6 law and according to the principles of comparative fault.

7 28. AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE to
8 Plaintiff's Complaint, and to each claim thereof, this answering Defendant is
9 informed and believes, and upon said information and belief alleges that, if, in fact,
10 Plaintiff sustained any injury or damage of any nature whatsoever by anything
11 done or omitted to be done by this answering Defendant (which supposition is not
12 admitted, but is merely stated for the purpose of this defense) said injury and
13 damage, if any, was proximately caused by the acts of persons other than this
14 answering Defendant.

15 29. AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE to
16 Plaintiff's Complaint, and to each claim thereof, this answering Defendant is
17 informed and believes, and upon said information and belief alleges that Plaintiff
18 failed to mitigate his damages, so as to bar and diminish any recovery by Plaintiff.

19 30. AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE to
20 Plaintiff's Complaint, and to each claim thereof, this answering Defendant is
21 informed and believes, and upon said information and belief alleges that, without
22 admitting any of the allegations of Plaintiff's Complaint, if this answering
23 Defendant is found liable at the time of trial, then this answering Defendant alleges
24 that its fault was not the sole legal or proximate cause of the incidents upon which
25 liability is based or damages awarded, if any, and that, accordingly, damages
26 awarded, if any, must be apportioned according to the respective faults of all
27 parties, persons or entities or their agents, servants and employees, who have

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1 contributed to or caused the alleged incidents or damages at the time of trial.

2 31. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE to
3 Plaintiff's Complaint, and to each claim thereof, this answering Defendant is
4 informed and believes, and upon said information and belief alleges that its
5 liability, if any, for Plaintiff's non-economic "general damages" is several only,
6 and not joint, pursuant to California Civil Code Section 1431.2.

7 32. AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE to
8 Plaintiff's Complaint, and to each claim thereof, this answering Defendant alleges
9 that it acted reasonably to prevent injuries to patrons of the store, and that
10 Defendant's actions were reasonable and prudent under the circumstances which
11 existed at the time and place of the incidents referred to in Plaintiff's Complaint.

12 33. AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE to
13 Plaintiff's Complaint, and to each claim thereof, this answering Defendant alleges
14 that it acted reasonably to prevent injuries to patrons of the store, and that
15 Plaintiff's injuries, if any, were not a result of any fault on the part of this
16 answering Defendant and, in fact, Defendant did not have actual or constructive
17 knowledge of any condition existing on said premises as not being in compliance
18 with any law as alleged by the Complaint as being the cause of Plaintiff's damages.

19 34. AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE to
20 Plaintiff's Complaint, and to each claim thereof, this answering Defendant alleges
21 that the Complaint and the whole thereof, fails to contain facts sufficient upon
22 which to base a recovery for "statutory minimum damages." .

23 35. AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE
24 to Plaintiff's Complaint, and to each claim thereof, this answering Defendant is
25 informed and believes, and upon said information and belief alleges that Plaintiff
26 has failed to exhaust any and all administrative remedies available to him prior to
27 the filing of this Complaint, and therefore, is estopped from asserting any claim for

1 relief as alleged in his Complaint.

2 36. AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE to
3 Plaintiff's Complaint, and to each claim thereof, this answering Defendant is
4 informed and believes, and thereon alleges that, to the extent that any barriers to
5 access by persons with disabilities exist relative to the store, the removal of said
6 barriers is not readily achievable.

7 37. AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE
8 DEFENSE to Plaintiff's Complaint, and to each claim thereof, this answering
9 Defendant is informed and believes, and thereon alleges that to the extent that any
10 barriers to access by persons with disabilities existed at the store in question, the
11 removal of such barriers is not required by California law.

12 38. AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE
13 DEFENSE, this answering Defendant alleges that the Complaint and the claims
14 therein are barred by all applicable statutes of limitation.

15 39. AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
16 this answering Defendant alleges that the Plaintiff unreasonably delayed in
17 bringing this action against Defendant and that such delay substantially prejudiced
18 this Defendant. Therefore, this action is barred by laches.

19 40. AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
20 Defendant is informed and believes and thereon alleges that with respect to the
21 matters alleged in the Complaint, Plaintiff does not come into court with clean
22 hands and is precluded from recovering on said Complaint by the doctrine of
23 unclean hands.

24 41. AS AN SEVENTEENTH, SEPARATE AND AFFIRMATIVE
25 DEFENSE, Defendant is informed and believes and thereon alleges that the above-
26 referenced Complaint, and each claim therein, is barred by the doctrine of estoppel.

27 42. AS A EIGHTEENTH, SEPARATE AND AFFIRMATIVE

1 DEFENSE, Defendant is informed and believes and thereon alleges that Plaintiff
2 has engaged in conduct and activities sufficient to constitute a waiver of any
3 alleged breach of duty, negligence, act, omission or any other conduct, if any, as
4 set forth in Plaintiff's Complaint.

5 43. AS A NINETEENTH, SEPARATE AND AFFIRMATIVE
6 DEFENSE, Defendant alleges that the alleged access barriers were not personally
7 encountered by the Plaintiff.

8 44. AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,
9 Defendant presently has insufficient knowledge or information on which to form a
10 belief as to whether it may have additional, as yet unstated, affirmative defenses
11 available for its benefit. Defendant thereby reserves herein its right to assert
12 additional affirmative defenses in the event discovery indicates that such
13 affirmative defenses would be appropriate.

14 WHEREFORE, Defendant prays judgment as follows:

15 1. That Plaintiff take nothing by virtue of this action;
16 2. That Plaintiff's request for injunctive relief be denied;
17 3. For all costs of suit herein;
18 4. That all causes of action alleged in the Complaint filed herein be
19 dismissed with prejudice;

20 5. For all attorneys' fees and costs expended in defense of this action;
21 and

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1 6. For such other and further relieve as this court deems just and proper.
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3 Dated: March 22, 2010

4 GORDON & REES, LLP

5 By: /s/ Jan K. Buddingh, Jr.

6 Debra Ellwood Meppen

7 Jan K. Buddingh, Jr.

8 Attorneys for Defendant,

9 Puma North America Inc.

10 Defendant PUMA NORTH AMERICAN, INC. hereby demands trial by jury
11 on Plaintiff's complaint and all claims therein that are triable by jury.

12 Dated: March 22, 2010

13 GORDON & REES, LLP

14 By: /s/ Jan K. Buddingh, Jr.

15 Debra Ellwood Meppen

16 Jan K. Buddingh, Jr.

17 Attorneys for Defendant,

18 Puma North America Inc.

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